



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/533,474

11/21/2005

Franz Xaver Scherl

2002DE435

5920

25255

7590

06/10/2009

CLARIANT CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
4000 MONROE ROAD
CHARLOTTE, NC 28205

EXAMINER

HOLLOMAN, NANNETTE

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

06/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/533,474	Applicant(s) SCHERL ET AL.	
	Examiner NANNETTE HOLLOMAN	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 7,9 and 12-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,10,11 and 16 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/10/2005 and 08/18/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Election/Restrictions

Applicant's election without traverse of group I (claims 1-11 and 16) and the species election

- 1) a single disclosed compound of formula (I);
- 2) a single disclosed composition form of solid; and
- 3) a composition comprising an agrochemical salt; ammonium sulfate

in the reply filed on November 03, 2008 and April 03, 2009 is acknowledged.

The election is withdrawn in regard to the single disclosed compound of formula (I).

Claims 7, 9 and 12-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 03, 2008 and April 03, 2009.

Claim Objections

Claim 8 is objected to because of the following informalities: the word "is" is missing after the word which. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Itoh et al. (US Patent No. 5,360,783, as disclosed by applicant).

Itoh et al. disclose a water-based pesticidal composition comprising a polyethylene polyamine, with the general formula shown in the Abstract and a pesticide. Itoh et al. disclose the polyethylene polyamine with defined substituents that encompass the limitation of instant formula (I) of claims 1 and 4 (column 2, lines 23-39). Itoh et al. further disclose the composition solves the problems of sedimentation, flocculation and gelation of the suspended or emulsified pesticidal particles (column 1, lines 51-57 and 65-68).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1) Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh et al. (US Patent No. 5,360,783, as disclosed by applicant) in view of Soula et al. (US Patent No. 6,133,199, as disclosed by applicant).

Itoh et al. is discussed above and differs from the instant claims insofar it does not disclose the pesticide glyphosate.

Soula et al. disclose a plant treatment composition for application of an anionic exogenous chemical substance such as glyphosate herbicide in salt and acid forms

Art Unit: 1612

(instant claim 3); wherein the composition comprises an aggregate (Abstract). Soula et al. disclose a polyamine aggregate of formula (II) (column 11, line 50); wherein beef tallow can be linked to the nitrogen (column 13, lines 8-19). Soula et al. disclose advantages of preparing the polyamine by reacting with a fat such as beef tallow include relatively low cost, typically exhibit no loss of useful properties, and the herbicide such as glyphosate can be loaded at a higher concentration (column 13, lines 51-67). Soula et al. further disclose including ammonium sulfate in the composition (instant claims 10-11 and 16) (column 18, lines 30-33). Soula et al. differs from the instant claims insofar as it does not disclose a compound of formula (I).

It would have been obvious to one of ordinary skill in the art to have used beef tallow in the polyethylene polyamine of Itoh et al. motivated by the desire to formulate a composition that is relatively low cost, typically exhibit no loss of useful properties, and the herbicide such as glyphosate can be loaded at a higher concentration as disclosed by Soula et al.

It is *prima facie* obviousness to select a known material based on its suitability for its intended use. Also, established precedent holds that it is generally obvious to add known ingredients to known compositions with the expectation of obtaining their known function. MPEP 2144.07. It would have been obvious to have used glyphosate as the pesticide of Itoh et al. motivated by the desire to formulate a composition with known herbicidal properties.

2) Claims 1-5, 8, 10-11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsay et al. (US Patent No. 6,750,178) in view of Itoh et al. (US Patent No. 5,360,783, as disclosed by applicant).

Ramsay et al. disclose an agrochemical composition comprising an agrochemical active ingredient such as glyphosate and an adjuvant (Abstract). Ramsey et al. further disclose said glyphosate in the form of a salt such as an ethanolamine, sodium and ammonium (instant claim 3) (column 5, lines 57-60). Ramsey et al. disclose alkoxyated amines provide excellent activity enhancement when used in an agrochemical formulation and exhibit low toxicological profile (column 1, lines 22-30). Ramsey et al. disclose the use of ammonium sulphate as an adjuvant and solid support when the active ingredient is glyphosate (instant claims 10-11 and 16) (column 6, lines 25-26). Ramsey et al. disclose a solid form that can be dispersed in liquid (column 6, lines 19 and 28-29) that contains the active ingredient from 20 to 90% and the proportion of adjuvant to agrochemical from 1:20 (column 6, line 1 and 17), which meets the limitation of instant claim 8. Ramsay et al. differs from the instant claims insofar as it does not disclose the compound of formula I.

Itoh et al. is discussed above and differs from the instant claims insofar as it does not disclose a solid formulation.

It would have been obvious to have used the polyethylene polyamine in the composition of Ramsay et al. motivated by the desire to form a composition that does not settle, flocculate and gel as disclosed by Itoh et al.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANNETTE HOLLOMAN whose telephone number is (571) 270-5231. The examiner can normally be reached on Mon-Fri 800am-500pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. H./
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612